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State v. Mensah, 227 A.3d 474 (R.I. 2020)

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Criminal Law and Procedure. *State v. Mensah*, 227 A.3d 474 (R.I. 2020). The Rhode Island Supreme Court applies an abuse of discretion standard of review when analyzing a trial justice’s decision to admit evidence under Rule 404(b) of the Rhode Island Rules of Evidence. If the record provides support for the trial justice’s decision, abuse of discretion is not found.

FACTS AND TRAVEL

In September 2017, the defendant, Eric Mensah (Mensah) was convicted for sexual assault charges against his daughter, Emma,¹ who was eight years old at the time.² Specifically, Mensah was charged with two counts each of first-degree and second-degree child molestation sexual assault.³ In 2014, Emma moved into her father’s apartment located in Pawtucket, Rhode Island, after relocating from Ghana.⁴ In December of 2015, Emma revealed to her babysitter, Luz Velez (Velez) that she had been sexually assaulted by her father shortly after her arrival from Ghana.⁵ This disclosure to Velez, along with an investigation of the defendant, culminated in Mensah’s indictment on May 6, 2016.⁶ On June 8, 2016, Mensah pled not guilty to the charges.⁷ Mensah’s trial took place on September 14, 2017, where Emma revealed the details of her father’s sexual abuse.⁸ Emma testified that shortly after arriving from Ghana, in the summer of 2014, defendant assaulted her for twenty to thirty minutes while she and defendant “took a

1. *State v. Mensah*, 227 A.3d 474, 476 (R.I. 2020). “Emma” is a pseudonym the court uses to protect the identity of the minor child. *Id.* at 476 n.1.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.* at 476–77.

7. *Id.* at 477.

8. *Id.*

nap together after coming home from a meat store.”⁹ While lying on the bed, “defendant removed the blanket that was covering Emma, took off her clothes and turned her over.”¹⁰ Defendant then proceeded to “touch the inside of her ‘butt’ as his body ‘moved up and down’” and inserted his finger into her vagina.¹¹ Defendant halted his abuse when Emma told defendant she would call the police if he did not stop.¹² Promising a trip to Chuck E. Cheese the next day, Mensah instructed Emma to keep what had happened to herself.¹³ Defendant further threatened to send Emma back to Ghana if she told anyone what had occurred in the apartment.¹⁴

Emma further testified about the details of the July 23, 2015, incident (“the lost earring incident”).¹⁵ After losing an earring, defendant warned Emma she would not attend a field trip the next day if she did not find it.¹⁶ However, even though she eventually found the earring, Mensah nevertheless proceeded to beat his daughter with a hanger.¹⁷ Hearing gagging noises and screaming while leaving the apartment complex, Timothy Orr, who lived on the floor above Mensah called the police after knocking on Mensah’s door with no response.¹⁸ When the police came, Mensah instructed Emma to get in the shower.¹⁹ At trial, when the police revealed that Emma had told them she was “fine,”²⁰ she explained that she lied to them in order to avoid a beating from her father.²¹ Emma also testified about three other incidents of sexual abuse by Mensah.²² Ultimately, Emma revealed her abuse to her babysitter, Velez, after watching an episode of *Forensic Files* which involved a

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* at 478.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *See id.* at 479.

rape and murder.²³ At trial, Mensah's brother, sister-in-law, and a friend with whom he grew up in Ghana testified on his behalf.²⁴ Seeking to admit additional evidence of both sexual and nonsexual abuse and conduct by Mensah, including reports about Mensah asking his daughter about her intimate parts and additional sexual contact initiated by defendant, the State filed a motion *in limine*.²⁵ The State was especially interested in bringing in evidence of Mensah's nonsexual abuse, including a July 23, 2015, incident when police were called to defendant's home, and an incident in which Mensah had used a hanger to hit his daughter.²⁶

The State argued the evidence should be admitted under rule 404(b) of the Rhode Island Rules of Evidence because the evidence helped explain why Emma was afraid to disclose the sexual abuse, how the abuse stopped suddenly, and why Emma feared no one would believe her allegations.²⁷ Defendant, however, argued that the alleged acts that occurred on July 23 were not sufficiently similar to the charges against the defendant to be admissible.²⁸ In particular, defendant argued that the conduct on July 23 was not sexual in nature, and therefore was not similar to the current charges.²⁹ In addition, Mensah argued that evidence of other alleged sexual abuse was inadmissible "because it was uncharged, prejudicial evidence."³⁰ The trial justice explained that she would allow evidence of the July 23 charges but exclude evidence that "defendant's pants were unbuttoned."³¹ In addition, evidence of the defendant's other alleged "uncharged sexual contact" would be admitted because "the evidence would tend to demonstrate [a] lewd disposition toward [Emma], intent, plan, opportunity, or design."³²

Utilizing Rule 33 of the Superior Court Rules of Criminal Procedure, Mensah moved for a new trial, arguing there was

23. *See id.* at 479.

24. *Id.* at 481.

25. *Id.* at 477.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.* at 477.

insufficient evidence to charge him with penile penetration of his daughter's anus and digital penetration of his daughter's vagina.³³ Defendant pointed to a previous court holding, *In re B.H.*,³⁴ in making his argument that there was "insufficient [evidence] to prove anal penetration," comparing Emma's testimony to the testimony given at the *In re B.H.* trial.³⁵ Mensah further argued that Emma's "imprecise" and "vague" testimony did not support count two of the charge.³⁶ Defendant argued that the "weight of the evidence was insufficient for a conviction, specifically contending that Emma was not a believable witness."³⁷

Ultimately, the trial justice denied Mensah's motion for a new trial.³⁸ In her bench decision, the trial justice addressed both the 'insufficient evidence' argument and the 'weight of the evidence' argument.³⁹ The trial justice first explained the standard used when presented with an argument dealing with the weight of the evidence.⁴⁰ While she thought Mensah "probably was" guilty, she revealed that had she been a juror she would not have thought the State proved its case beyond a reasonable doubt.⁴¹ However, the trial justice stated that reasonable minds could differ.⁴² In regard to the insufficient evidence argument, the trial justice pointed to *In re B.H.* to distinguish Mensah's current case.⁴³ Because Emma had "reported anal pain" and testified that "defendant was moving back and forth," the trial justice found this evidence to be sufficient.⁴⁴

33. *Id.* at 482.

34. *In re B.H.*, 138 A.3d 774 (R.I. 2016).

35. *Mensah*, 227 A.3d at 482.

36. *Id.*

37. *Id.*

38. *See id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.* The trial justice noted that Emma's testimony about "anal pain," coupled with her description of defendant's movements, were "more than the complainant in *In re B.H.* had testified to." *Id.* As a result, the trial justice deemed Emma's testimony sufficient enough to evidence anal penetration. *Id.*

After trial, Mensah appealed his case to the Rhode Island Supreme Court.⁴⁵

ANALYSIS AND HOLDING

On appeal, Mensah put forth two arguments. First, Mensah argued that “the July 2015 ‘lost earring’ incident should not have been admitted under Rule 404(b).”⁴⁶ Secondly, Mensah argued that the “trial justice erred by denying his motion for a new trial.”⁴⁷ The Court began its analysis by stating that the abuse of discretion standard is the proper standard of review when reviewing a trial court’s decision to admit Rule 404(b) evidence.⁴⁸ In addition, the Court noted that a trial justice does not abuse their discretion where the record provides an explanation supporting the decision made by the trial justice.⁴⁹

A. *Rule 404(b) Evidence*

Addressing the first issue—whether the July 2015 incident was properly admitted—the Court provided an explanation of the raise-or-waive rule. In particular, the rule mandates litigants to “raise all their claims for relief in the trial court and properly articulate them to a judge for a ruling.”⁵⁰ After noting Mensah’s only objection to the admission of the July 2015 incident was at the state’s motion *in limine*, the Court stated firmly that this objection was not enough to preserve the evidentiary issue on appeal.⁵¹ The Court explained its reasoning behind the statement, pointing to prior holdings which made clear that a motion *in limine* was “preliminary in nature” and, therefore, provided no finality on questions pertaining to the admissibility of evidence.⁵² As such, Mensah’s ability to appeal the admissibility issue in regard to the July 23, 2015,

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.* at 483 (citing *State v. Perry*, 182 A.3d 558, 568 (R.I. 2018)).

49. *Id.* (quoting *State v. Rainey*, 175 A.3d 1169, 1182 (R.I. 2018)).

50. *Id.* at 483 (citing *State v. Andrade*, 209 A.3d 1185, 1194 (R.I. 2019)).

51. *Id.*

52. *Id.* (*State v. Colon*, 198 A.3d 1249, 1255 (R.I. 2019)).

incident had effectively been waived as a result of his failure to raise a timely objection at trial.⁵³

B. *Motion for a New Trial*

Next, the Court addressed defendant's claim that the trial justice erred in refusing to grant his motion for a new trial. The Court began by explaining that "it is well settled that a defendant arguing a motion for a new trial may do so on [either] 1) insufficiency of the evidence or 2) weight of the evidence."⁵⁴ Noting Mensah's argument mingled the two bases together, the Court proceeded to divide its analysis of Mensah's argument.⁵⁵

1. *Insufficiency of the Evidence*

The Court first addressed defendant's argument that there was insufficient evidence.⁵⁶ When reviewing a trial justice's decision on an 'insufficiency of the evidence' basis, the Court explained, a *de novo* standard of review is applied and the Court "examine[s] the evidence in the light most favorable to the verdict."⁵⁷ Therefore, a guilty verdict by a jury will not be overturned unless the Court concludes that "no reasonable jury could have rendered it."⁵⁸ Likewise, a trial justice must read the evidence in favor of the prosecution when a "sufficiency of the evidence" challenge is presented.⁵⁹ In doing so, the trial justice must examine the evidence "without assessing the weight of the evidence or the credibility of the witnesses, and draw all reasonable inferences consistent with guilt, mindful that the jury likewise has done so."⁶⁰

Accordingly, the Court stated the definition of sexual penetration⁶¹ as written in the Rhode Island General Laws section

53. *See id.* at 484.

54. *Id.* (quoting *State v. McDonald*, 157 A.3d 1080, 1088 (R.I. 2017)).

55. *See id.*

56. *Id.* at 485.

57. *Id.*

58. *Id.* (quoting *State v. Clark*, 974 A.2d 558, 571 (R.I. 2009)).

59. *See id.* at 484.

60. *Id.*

61. *Id.* The Court defines sexual penetration as follows:
Sexual penetration is defined in our general laws as[] 'sexual intercourse, cunnilingus, fellatio, and anal intercourse, or any other intrusion, however slight,

11-37-1(8).⁶² After stating the definition of sexual penetration, which includes “anal intercourse,” the Court proceeded to distinguish Mensah’s case from *In re B.H.*, a case in which the Court found that the charge of first-degree child molestation was based on insufficient evidence.⁶³ In Mensah’s case, however, the Court found Emma’s testimony sufficient because, unlike *In re B.H.*, Emma’s testimony was “more precise[]” and “[more] detail[ed].”⁶⁴ Because Emma’s testimony was sufficient to support Mensah’s charge of first-degree child molestation, the Court stated that the trial justice properly rejected Mensah’s motion for a new trial on “sufficiency grounds.”⁶⁵

2. *Weight of the Evidence*

Next the Court addressed defendant’s argument regarding the weight of the evidence. When reviewing a trial justice’s decision on a “weight of the evidence” basis, the Court’s review of the trial justice’s decision is deferential.⁶⁶ The Court explained the proper procedure a trial justice must take when presented with a motion for a new trial on weight of the evidence grounds: acting as a “thirteenth juror,” the trial justice independently assesses the evidence by considering the “credibility of the witnesses and . . . the weight of the evidence.”⁶⁷

The Court highlighted that absent clear error or a misconception of the evidence, the trial justice’s decision will not be overturned so long as the trial justice “articulates adequate grounds” for the decision.⁶⁸ Disagreeing with Mensah’s contention that “no reasonable mind could have found him guilty of the charges” and finding that the trial justice applied the appropriate

by any part of a person’s body or by any object into the genital or anal openings of another person’s body, or the victim’s own body upon the accused’s instruction, but emission of semen is not required.

Id. (quoting 11 R.I. GEN. LAWS 11-37-1(8)).

62. *See id.* at 485.

63. *See id.*

64. *See id.*

65. *Id.*

66. *Id.* at 486.

67. *Id.* (quoting *State v. Johnson*, 199 A.3d 1046, 1050–51 (R.I. 2019)).

68. *Id.*

standard of review, the Court affirmed the lower court's denial of Mensah's motion for a new trial.⁶⁹

COMMENTARY

This case undoubtedly provides an excellent example of the imperative of meticulously studying all facets of relevant caselaw, paying particular attention to all the rules and procedures governing courtroom procedures. Defendant's argument that the State had the means to present its case using less prejudicial evidence is compelling, but one can only speculate whether Mensah's appeal would have secured a better outcome had counsel raised a timely objection to the State's presentation of the July 2015 incident.

The Court's explanation regarding its belief that the State presented sufficient evidence of sexual penetration is quite straightforward, but it would have been helpful had the Court also provided guidelines and instruction about the required details necessary for evidencing sexual penetration. But *Mensah*, at least, seems to indicate that reports of pain is a compelling factor in the Court's analysis. Despite the need for more instruction regarding evidence of sexual penetration, the Court does an efficient job providing a thorough explanation of its reasoning as it pertains to its holding in *Mensah*.

CONCLUSION

The Court ultimately rejected defendant's argument that reasonable minds could not have found him guilty of the charges.⁷⁰ Accordingly, the Court affirmed the Superior Court's decision, holding that the trial justice applied the proper standard of review and, therefore, appropriately denied defendant's motion for a new trial after finding that reasonable minds could differ from her own conclusions.⁷¹

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69. *Id.*

70. *Id.*

71. *Id.*